

D--1937
New York, NY

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

PARISIAN MANICURE MFG. CO., INC. AND ITS
ALTER EGO ALLURE MARKETING CORP., AND
JAMES V. NUCITO AND ROSEANNE NUCITO,
INDIVIDUALS

and

Case 2--CA--17593

PLASTIC MOULDERS' AND NOVELTY WORKERS
UNION, LOCAL 132, I.L.G.W.U.

SUPPLEMENTAL DECISION AND ORDER

On 23 September 1981 the National Labor Relations Board issued a Decision and Order ¹ in the above-entitled proceeding in which the Board, inter alia, ordered the Respondents to make whole certain employees and the Union for their losses resulting from the Respondents' unfair labor practices in violation of Section 8(a)(5) and (1) and Section 8(d) of the National Labor Relations Act. On 9 February 1982 the United States Court of Appeals for the Second Circuit entered its judgment enforcing the Board's Order. A controversy having arisen over the amount of backpay due under the Board's Order, as enforced by the court, the Regional Director for Region 2, on 31 January 1984, issued and duly served on the Respondents a backpay specification and notice of hearing, alleging the amount of payments and contributions due the employ-

¹ 258 NLRB 203 (1981). Chairman Dotson and Member Hunter did not participate in that proceeding. In light of the Respondents' failure to file an answer in that case which complied with the Board's Rules and Regulations, the Chairman regards the earlier proceeding as being essentially a default judgment which is without precedential value.

be true and the Respondents shall be precluded from introducing any evidence controverting them.

In addition to the backpay specification and notice of hearing, the General Counsel notified the Respondents by certified mail 17 February 1984 that no answer had been received to the backpay specification, and that the General Counsel intended to move for summary judgment in accordance with the specification. The letter also informed the Respondents that if they wished to submit an answer in proper form, albeit untimely, setting forth any and all reasons why such answer should be considered, they could do so if the answer and reply were received no later than 1 March 1984. The Respondents refused to accept delivery of said letter and it was returned by the Postal Service to the Region marked ''Refused.''

As of 25 April 1984, the date of the Motion for Summary Judgment, the Respondents had not filed an answer. The Respondents also failed to file a response to the Notice to Show Cause. Therefore, the allegations of the Motion for Summary Judgment stand uncontroverted. As the Respondents have not filed an answer to the specification and have not offered any explanation for their failure to do so, in accordance with the rules set forth above, the allegations in the backpay specification are deemed to be admitted as true and the Board so finds.

Accordingly, the Board grants the Motion for Summary Judgment and concludes that the net backpay due each of the employees; the payments to the relevant health service plan; the health, welfare, and retirement fund contributions due each of the employees; and the dues deductions owed to the Union

are as stated in the computations of the specification.² The Board hereby orders that payment thereof be made by the Respondents as set forth below.

ORDER

The National Labor Relations Board hereby orders that the Respondents, Parisian Manicure Mfg. Co., Inc. and its alter ego Allure Marketing Corp., and James V. Nucito and Roseanne Nucito, New York, New York, their officers, agents, successors, and assigns, shall

1. Make whole the employees named below by payment to them of the amount set forth opposite their names, plus interest thereon as computed in the manner prescribed in Florida Steel Corp., 231 NLRB 651 (1977),³ minus tax withholdings required by Federal and state laws:

Rachel Beltran	\$178
Miquel Falerio	178
Faustino Ramos	178
Zoila Sanchez	178

2. Make whole the employees named below by payment to their accounts with Local 132's health and welfare fund the amount set forth opposite their names, plus interest accrued to the date of payment pursuant to the Board's Order:

Rachel Beltran	\$265.10
Miquel Falerio	300.19
Faustino Ramos	309.76
Zoila Sanchez	249.15

3. Make whole the employees named below by payment to their accounts with Local 132's retirement fund the amount set forth opposite their names, plus interest accrued to the date of payment pursuant to the Board's Order:

² We have corrected a mathematical error in the computation of Faustino Ramos' health and welfare fund contribution and have adjusted his make-whole amount accordingly.

³ See generally Isis Plumbing Co., 138 NLRB 716 (1962).

ees and the Union under the Board's Order and notifying the Respondents that they should file a timely answer complying with the Board's Rules and Regulations. The Respondents failed to file such an answer.

On 25 April 1984 the General Counsel filed directly with the Board in Washington, D.C., a Motion for Summary Judgment in accordance with the backpay specification. On 30 April 1984 the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the General Counsel's motion should not be granted. The Respondents failed to file a response to the Notice to Show Cause.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

On the entire record in this proceeding, the Board makes the following

Ruling on the Motion for Summary Judgment

Section 102.54 of the Board's Rules and Regulations provides, in pertinent part, as follows:

(a) . . . The respondent shall, within 15 days from the service of the specification, if any, file an answer thereto . . .

(c) . . . If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without notice to the respondent, find the specification to be true and enter such order as may be appropriate.

The backpay specification, issued and served on the Respondents 31 January 1984, specifically states that the Respondents shall, within 15 days from the date of the specification, file with the Regional Director for Region 2 an answer to the specification. The backpay specification further states that if the answer fails to deny the allegations of the specification in the manner required under the Board's Rules and Regulations and the failure to do so is not adequately explained, such allegations shall be deemed to be admitted to

Rachel Beltran	\$265.10
Miquel Falero	300.19
Faustino Ramos	309.76
Zoila Sanchez	249.15

4. Make whole the employees named below by payment to their accounts with Local 132's health service plan the amount set forth opposite their names, plus interest accrued to the date of payment pursuant to the Board's Order:

Rachel Beltran	\$ 37.78
Miquel Falero	42.75
Faustino Ramos	44.12
Zoila Sanchez	35.51

5. Make whole Plastic Moulders' and Novelty Workers Union, Local 132, I.L.G.W.U., by payment to it of dues deductions on behalf of employees in the amount of \$66, plus interest accrued to the date of payment pursuant to the Board's Order.

Dated, Washington, D.C. 12 July 1984

Donald L. Dotson, Chairman

Don A. Zimmerman, Member

Robert P. Hunter, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD